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By: **Delegate Oaks**

Introduced and read first time: March 6, 2000

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Extinction of Cigarette Vending Machines Act**

3 FOR the purpose of prohibiting the possession, maintenance, or operation of a  
4 vending machine that dispenses a tobacco product; establishing a certain  
5 penalty; requiring the Comptroller of the Treasury to establish a certain  
6 program; requiring the Cigarette Restitution Fund to fund a certain program;  
7 repealing certain provisions of law that provide an exception to a penalty for a  
8 certain sale of a tobacco product vending machine sale by the owner of a tobacco  
9 product vending machine; repealing certain provisions of law relating to vending  
10 machine operators; defining certain terms; making certain stylistic changes;  
11 and generally relating to the sale of tobacco products by vending machines or  
12 other mechanical devices.

13 BY repealing and reenacting, without amendments,  
14 Article 27 - Crimes and Punishments  
15 Section 404  
16 Annotated Code of Maryland  
17 (1996 Replacement Volume and 1999 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article 27 - Crimes and Punishments  
20 Section 405  
21 Annotated Code of Maryland  
22 (1996 Replacement Volume and 1999 Supplement)

23 BY adding to  
24 Article 27 - Crimes and Punishments  
25 Section 563A to be under the amended subheading "Tobacco Products - Sales by  
26 Vending Machine"  
27 Annotated Code of Maryland  
28 (1996 Replacement Volume and 1999 Supplement)

29 BY repealing and reenacting, with amendments,

1 Article - Business Regulation  
2 Section 16-101, 16-201 through 16-206, 16-207(c)(3)(ii), 16-208 through  
3 16-210, 16-214, 16-215, 16-218, 16-301, and 16-305  
4 Annotated Code of Maryland  
5 (1998 Replacement Volume and 1999 Supplement)

6 BY repealing  
7 Article - Business Regulation  
8 Section 16-220 and 16-221  
9 Annotated Code of Maryland  
10 (1998 Replacement Volume and 1999 Supplement)

11 BY repealing and reenacting, with amendments,  
12 Article - Commercial Law  
13 Section 11-501 and 11-503  
14 Annotated Code of Maryland  
15 (1990 Replacement Volume and 1999 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article - State Finance and Procurement  
18 Section 7-317(f)  
19 Annotated Code of Maryland  
20 (1995 Replacement Volume and 1999 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article 27 - Crimes and Punishments**

24 404.

25 (a) (1) In this subheading the following words have the meanings indicated.

26 (2) "Tobacco product" means any substance containing tobacco, including  
27 cigarettes, cigars, smoking tobacco, snuff, or smokeless tobacco.

28 (3) "Distribute" means to:

29 (i) Give away, sell, deliver, dispense, or issue;

30 (ii) Offer to give away, sell, deliver, dispense, or issue; or

31 (iii) Cause or hire any person to give away, sell, deliver, dispense, or  
32 issue or offer to give away, sell, deliver, dispense, or issue.

1 (b) (1) A person engaged in the business of selling or otherwise distributing  
2 tobacco products for commercial purposes, including persons licensed under Title 16  
3 of the Business Regulation Article, may not:

4 (i) Distribute any tobacco product to a minor, unless the minor is  
5 acting solely as the agent of the minor's employer, who is in the business of  
6 distributing tobacco products;

7 (ii) Distribute cigarette rolling papers to a minor; or

8 (iii) Distribute to any minor a coupon redeemable for any tobacco  
9 product.

10 (2) A person not described under paragraph (1) of this subsection may  
11 not:

12 (i) Purchase for or sell to a minor any tobacco product; or

13 (ii) Deliver or sell to a minor cigarette rolling papers.

14 (c) The provisions of subsection (b) of this section do not apply to the  
15 distribution of a coupon which is redeemable for any tobacco product when the coupon  
16 is contained in a newspaper, a magazine, or any other type of publication in which the  
17 coupon is incidental to the primary purpose of the publication, or sent through the  
18 mail.

19 (d) In a prosecution for a violation of subsection (b)(1) or (2) of this section, it  
20 shall be a defense that the defendant examined the purchaser's or recipient's driver's  
21 license or other valid identification issued by an employer, a governmental entity, or  
22 institution of higher education that positively identified the purchaser or recipient as  
23 at least 18 years old.

24 405.

25 (a) [Except as provided in subsection (b) of this section, a] A person who  
26 violates § 404(b) of this subheading shall be subject to:

27 (1) For a first violation, a fine of not more than \$300;

28 (2) For a second violation occurring within a 2-year period of the first  
29 violation, a fine of not more than \$1,000; and

30 (3) For a third or subsequent violation occurring within a 2-year period  
31 of the prior violation, a fine of not more than \$3,000.

32 [(b) If the requirements of § 16-209(b)(2)(ii) of the Business Regulation Article  
33 are satisfied, the provisions of subsection (a) of this section do not apply to the owner  
34 of a tobacco product vending machine or any other person exercising control over a  
35 tobacco product vending machine if a person under 18 has purchased a tobacco  
36 product from a vending machine.]

1 [(c)] (B) For purposes of this section, a violation means a separate and distinct  
2 incident at a different time and occasion.

3 [Tourist Information] TOBACCO PRODUCTS - SALES BY VENDING MACHINE  
4 563A.

5 (A) (1) IN THIS SUBHEADING THE FOLLOWING WORDS HAVE THE  
6 MEANINGS INDICATED.

7 (2) "TOBACCO PRODUCT" MEANS ANY SUBSTANCE CONTAINING  
8 TOBACCO, INCLUDING CIGARETTES, CIGARS, SMOKING TOBACCO, SNUFF, OR  
9 SMOKELESS TOBACCO.

10 (3) "VENDING MACHINE" MEANS A MECHANICAL, ELECTRONIC, OR  
11 SIMILAR SELF-SERVICE DEVICE THAT IS OPERATED BY CURRENCY, TOKENS, OR AN  
12 ELECTRONIC OR MAGNETIC CARD AND DISPENSES A SERVICE OR PRODUCT.

13 (B) A PERSON MAY NOT POSSESS, MAINTAIN, OR OPERATE A VENDING  
14 MACHINE THAT DISPENSES A TOBACCO PRODUCT.

15 (C) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A  
16 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF \$500.

17 (2) A VENDING MACHINE THAT IS OPERATED IN VIOLATION OF THIS  
18 SECTION SHALL BE SEALED, REMOVED, IMPOUNDED, OR DISABLED BY A LAW  
19 ENFORCEMENT OFFICER HAVING JURISDICTION IN THE COUNTY OR MUNICIPAL  
20 CORPORATION IN WHICH THE VIOLATION OCCURS.

21 (D) (1) THE COMPTROLLER SHALL ESTABLISH A PROGRAM TO PURCHASE  
22 ALL VENDING MACHINES THAT WERE LICENSED AS OF JULY 1, 1999 FROM THEIR  
23 OWNERS OR OPERATORS.

24 (2) THE COMPTROLLER SHALL PAY \$4,000 FOR EACH VENDING MACHINE  
25 PURCHASED UNDER THIS SECTION.

26 (E) AS PROVIDED IN § 7-317 OF THE STATE FINANCE AND PROCUREMENT  
27 ARTICLE, THE COMPTROLLER SHALL APPROPRIATE AND USE MONEY FROM THE  
28 CIGARETTE RESTITUTION FUND TO PAY FOR THE PURCHASE OF VENDING MACHINES  
29 UNDER THIS SECTION.

30 **Article - Business Regulation**

31 16-101.

32 (a) In this title the following words have the meanings indicated.

33 (b) "Cigarette" means any size or shaped roll for smoking that is made of  
34 tobacco or tobacco mixed with another ingredient and wrapped in paper or in any  
35 other material except tobacco.

1 (c) "County license" means a license issued by the clerk to sell cigarettes at  
2 retail in a county.

3 (d) "Sell" means to exchange or transfer, or to agree to exchange or transfer,  
4 title or possession of property, in any manner or by any means, for consideration.

5 (e) [(1)] "Sell cigarettes at retail" means to sell cigarettes to a consumer.

6 [(2)] "Sell cigarettes at retail" includes selling cigarettes through a  
7 vending machine.]

8 16-201.

9 (a) In this subtitle the following words have the meanings indicated.

10 (b) "License" means:

11 (1) a license issued by the Comptroller under § 16-205(a) of this subtitle  
12 to:

13 (i) act as a manufacturer;

14 (ii) act as a subwholesaler;

15 [(iii) act as a vending machine operator;]

16 [(iv)] (III) act as a wholesaler; or

17 [(v)] (IV) act as a storage warehouse; or

18 (2) a license issued by the clerk under § 16-205(b) of this subtitle to act  
19 as a retailer.

20 (c) "Licensed manufacturer" means a person licensed by the Comptroller  
21 under § 16-205(a) of this subtitle to act as a manufacturer.

22 (d) "Licensed retailer" means a person licensed by the clerk under § 16-205(b)  
23 of this subtitle to act as a retailer.

24 (e) "Licensed subwholesaler" means a person licensed by the Comptroller  
25 under § 16-205(a) of this subtitle to act as a subwholesaler.

26 [(f) "Licensed vending machine operator" means a person licensed by the  
27 Comptroller under § 16-205(a) of this subtitle to act as a vending machine operator.]

28 [(g)] (F) "Licensed wholesaler" means a person licensed by the Comptroller  
29 under § 16-205(a) of this subtitle to act as a wholesaler.

30 [(h)] (G) "Licensed storage warehouse" means a facility licensed by the  
31 Comptroller under § 16-205(a) of this subtitle to act as a storage warehouse.

- 1        (i)     (H)     "Manufacturer" means a person who:
- 2                (1)     operates one or more cigarette manufacturing plants within the  
3 United States; and
- 4                (2)     (i)     sells unstamped cigarettes to a licensed cigarette wholesaler  
5 located in Maryland;
- 6                       (ii)     unless otherwise prohibited or restricted under local law, this  
7 article, or Article 27 of the Code, distributes sample cigarettes to consumers located in  
8 Maryland; or
- 9                       (iii)    stores unstamped cigarettes in a cigarette storage warehouse in  
10 Maryland for subsequent shipment to licensed wholesalers, federal reservations, or  
11 persons out of State.
- 12     (j)     (I)     "Retailer" means a person who:
- 13                (1)     [sells cigarettes to consumers through vending machines on fewer  
14 than 40 premises;
- 15                (2)     otherwise] sells cigarettes to consumers; or
- 16                (3)     (2)     holds cigarettes for sale to consumers.
- 17     (k)     (J)     "Stamped cigarettes" means a package of cigarettes to which tobacco  
18 tax stamps are affixed in the amount and manner required by § 12-304 of the Tax -  
19 General Article.
- 20     (l)     (K)     "Storage warehouse" means a storage facility in Maryland operated  
21 for the purpose of storing unstamped cigarettes on behalf of a licensed cigarette  
22 manufacturer.
- 23     (m)     (L)     (1)     "Subwholesaler" means a person who:
- 24                       (i)     holds stamped cigarettes for sale to another person for resale; or
- 25                       (ii)    sells stamped cigarettes to another person for resale.
- 26                (2)     "Subwholesaler" does not include a person who sells unstamped  
27 cigarettes or holds unstamped cigarettes for sale.
- 28     (n)     (M)     "Unstamped cigarettes" means a package of cigarettes to which  
29 tobacco tax stamps are not affixed in the amount and manner required by § 12-304 of  
30 the Tax - General Article.
- 31     (o)     "Vending machine operator" means a person who:
- 32                (1)     holds cigarettes for sale to consumers through vending machines on  
33 40 or more premises; or

1           (2)       sells cigarettes to consumers through vending machines on 40 or  
2 more premises.]

3       [(p)]   (N)       "Wholesaler" means a person who:

4           (1)       holds cigarettes for sale to another person for resale; or

5           (2)       sells cigarettes to another person for resale.

6 16-202.

7       (a)       Except as provided in subsection (b) of this section, a person must have an  
8 appropriate license whenever the person acts as a manufacturer, retailer, storage  
9 warehouse, subwholesaler, [vending machine operator,] or wholesaler in the State.

10       (b)       A person need not get a retailer license to act as a retailer at a vending  
11 stand operated under a trader's license issued to Blind Industries and Services of  
12 Maryland.

13       (c)       A license to act as a retailer is required for each place of business where a  
14 person acts as a retailer.

15       (d)       (1)       A person licensed as a manufacturer, or person connected with the  
16 business of a licensed manufacturer or related by ownership, may not at the same  
17 time hold or have any financial interest in a wholesaler license or in any business of  
18 a wholesaler.

19           (2)       A person licensed as a wholesaler, or person connected with the  
20 business of a licensed wholesaler or related by ownership, may not at the same time  
21 hold or have any financial interest in a manufacturer license or in any business of a  
22 manufacturer.

23 16-203.

24       (a)       An applicant for a license to act as a manufacturer shall maintain an  
25 established place of business for the manufacture and storage of cigarettes.

26       (b)       An applicant for a license to act as a storage warehouse shall maintain an  
27 established place of business for the storage of unstamped cigarettes.

28       (c)       An applicant for a license to act as a subwholesaler shall maintain:

29           (1)       an established place of business, including warehouse facilities, for  
30 the sale of cigarettes; and

31           (2)       necessary equipment and vehicles for the storage and distribution of  
32 cigarettes.

33       [(d)       An applicant for a license to act as a vending machine operator shall  
34 maintain an established place of business, including warehouse facilities, for the  
35 purchase, storage, and distribution of cigarettes.]

- 1 [(e)] (D) An applicant for a license to act as a wholesaler shall maintain:
- 2 (1) an established place of business, including warehouse facilities, for  
3 the sale of cigarettes; and
- 4 (2) necessary equipment and vehicles for the storage and distribution of  
5 cigarettes.

6 16-204.

- 7 (a) An applicant for a license to act as a manufacturer shall:
- 8 (1) submit an application to the Comptroller on the form and containing  
9 the information that the Comptroller requires; and
- 10 (2) pay to the Comptroller a fee of \$25.

- 11 (b) (1) An applicant for a license to act as a retailer shall:
- 12 (i) obtain the county license required under § 16-301 of this title;
- 13 (ii) submit to the clerk an application for each permanent or  
14 temporary place of business located in the same enclosure and operated by the same  
15 applicant; and
- 16 (iii) pay to the clerk a fee of \$30.

- 17 (2) The application shall:
- 18 (i) be made on the form that the clerk requires; and
- 19 (ii) contain the information that the Comptroller requires.

- 20 (c) An applicant for a license to act as a storage warehouse shall:
- 21 (1) submit an application to the Comptroller on the form and containing  
22 the information that the Comptroller requires; and
- 23 (2) pay to the Comptroller a fee of \$25.

- 24 (d) An applicant for a license to act as a subwholesaler shall:
- 25 (1) submit an application to the Comptroller on the form and containing  
26 the information that the Comptroller requires; and
- 27 (2) pay to the Comptroller a fee of:
- 28 (i) \$500 for a 1-year term; or
- 29 (ii) the amount that results when \$500 is prorated to the nearest  
30 month, if the application is for less than a 1-year term.

1 [(e) An applicant for a license to act as a vending machine operator shall:

2 (1) obtain the county license required under § 16-301 of this title;

3 (2) submit an application to the Comptroller on the form and containing  
4 the information that the Comptroller requires; and

5 (3) pay to the Comptroller a fee of \$500.]

6 [(f) (E) An applicant for a license to act as a wholesaler shall:

7 (1) submit an application to the Comptroller on the form and containing  
8 the information that the Comptroller requires; and

9 (2) pay to the Comptroller a fee of \$750.

10 [(g) (F) If a person has had a license revoked under § 16-210 of this subtitle,  
11 the person may not reapply for a license within 1 year after the date when the prior  
12 license was revoked.

13 [(h) (G) (1) In addition to the license fee otherwise required under this  
14 section:

15 (i) an applicant for the initial issuance of a license issued by the  
16 Comptroller under this title shall pay to the Comptroller a nonrefundable application  
17 fee of \$200; and

18 (ii) an applicant for renewal of a license issued by the Comptroller  
19 under this title shall pay to the Comptroller a renewal fee of \$30.

20 (2) The application and renewal fees required under this subsection do  
21 not apply to a license that is issued by the clerk or to a storage warehouse license  
22 application.

23 16-205.

24 (a) The Comptroller shall issue an appropriate license to each applicant who  
25 meets the requirements of this subtitle for a license to act as a manufacturer, storage  
26 warehouse, subwholesaler, [vending machine operator,] or wholesaler.

27 (b) The clerk shall issue to each applicant who meets the requirements of this  
28 subtitle a license to act as a retailer.

29 16-206.

30 (a) A manufacturer license authorizes the licensee to:

31 (1) sell unstamped cigarettes to a licensed cigarette wholesaler located in  
32 Maryland;

1 (2) except as otherwise prohibited or restricted under local law, this  
2 article, or Article 27 of the Code, distribute sample cigarettes to consumers located in  
3 Maryland;

4 (3) store unstamped cigarettes in a licensed cigarette storage warehouse  
5 for subsequent shipment to licensed wholesalers, federal reservations, or persons out  
6 of State; and

7 (4) upon approval of the Comptroller, act as an agent of a Maryland  
8 licensed wholesaler for stamping and distribution of cigarettes.

9 (b) A retailer license authorizes the licensee to:

10 (1) act as a retailer; and

11 (2) buy stamped cigarettes from a subwholesaler or wholesaler.

12 (c) A storage warehouse license authorizes the licensee to operate a storage  
13 facility in Maryland for the purpose of storing unstamped cigarettes on behalf of a  
14 licensed cigarette manufacturer.

15 (d) A subwholesaler license authorizes the licensee to:

16 (1) act as a subwholesaler; and

17 (2) buy stamped cigarettes from a wholesaler or another subwholesaler.

18 [(e) A vending machine operator license authorizes the licensee to:

19 (1) act as a vending machine operator; and

20 (2) buy stamped cigarettes from a subwholesaler or wholesaler.]

21 [(f) (E) A wholesaler license authorizes the licensee to:

22 (1) act as a wholesaler;

23 (2) buy unstamped cigarettes directly from a cigarette manufacturer;

24 (3) hold unstamped cigarettes;

25 (4) buy tobacco tax stamps as authorized by § 12-303 of the Tax -  
26 General Article;

27 (5) transport unstamped cigarettes in the State;

28 (6) sell unstamped cigarettes to another licensed wholesaler if the  
29 Comptroller specifically authorizes; and

30 (7) upon approval of the Comptroller, designate a licensed manufacturer  
31 to act as its agent for the stamping and distribution of cigarettes.

1 16-207.

2 (c) Before a license issued under this subtitle expires, the licensee may renew  
3 it for an additional 1-year term, if the licensee:

4 (3) pays to the issuing official:

5 (ii) if the license is issued by the Comptroller, the renewal fee  
6 required under [§ 16-204(h)] § 16-204(G) of this subtitle.

7 16-208.

8 (a) (1) A licensed retailer [or licensed vending machine operator] may not  
9 assign the license.

10 (2) If a licensed subwholesaler or licensed wholesaler sells the licensee's  
11 cigarette business and pays to the Comptroller a license assignment fee of \$10, the  
12 licensee may assign the license to the buyer of the business.

13 (b) If the cigarette business of a licensee is transferred because of bankruptcy,  
14 death, incompetency, receivership, or otherwise by operation of law, the Comptroller  
15 shall transfer the license without charge to the new owner of the licensee's business.

16 (c) (1) If a licensed subwholesaler or licensed wholesaler surrenders the  
17 license to the Comptroller and if no disciplinary proceedings are pending against the  
18 licensee, the Comptroller shall refund a pro rata part of the license fee for the  
19 unexpired term of the license.

20 (2) A licensed retailer [or licensed vending machine operator] is not  
21 allowed a refund for the unexpired term of the license.

22 16-209.

23 [(a)] A licensee shall display a license in the way that the Comptroller requires  
24 by regulation.

25 [(b)] A licensee who sells cigarettes through a vending machine:

26 (1) shall place each package of cigarettes in the machine so that when  
27 the package is visible the tax stamps required by § 12-304 of the Tax - General  
28 Article are also visible; and

29 (2) in the way that the Comptroller requires by regulation, shall:

30 (i) identify each vending machine with a conspicuous label that  
31 states the licensee's name, address, and telephone number; and

32 (ii) display on a conspicuous label applicable prohibitions and  
33 penalties under Article 27, §§ 404 and 405 of the Code.]

1 16-210.

2 (a) Subject to the hearing provisions of § 16-211 of this subtitle, the  
3 Comptroller may deny a license to an applicant, reprimand a licensee, or suspend or  
4 revoke a license if the applicant or licensee:

5 (1) fraudulently or deceptively obtains or attempts to obtain a license for  
6 the applicant or licensee or for another person;

7 (2) fraudulently or deceptively uses a license;

8 (3) fails to comply with the Maryland Cigarette Sales Below Cost Act or  
9 regulations adopted under that Act; or

10 (4) buys cigarettes for resale:

11 (i) in violation of a license; or

12 (ii) from a person who is not a cigarette manufacturer, licensed  
13 subwholesaler, [licensed vending machine operator,] or licensed wholesaler.

14 (b) Subject to the hearing provisions of § 16-211 of this subtitle, the  
15 Comptroller may suspend or revoke a license if the licensee violates:

16 (1) Title 12 of the Tax - General Article, or regulations adopted under  
17 that title; or

18 (2) Title 16 of the Business Regulation Article, or regulations adopted  
19 under that title.

20 (c) Subject to the hearing provisions of § 16-211 of this subtitle, the  
21 Comptroller shall deny a license to any applicant who has had a license revoked  
22 under this section until:

23 (1) 1 year has passed since the license was revoked; and

24 (2) it satisfactorily appears to the Comptroller that the applicant will  
25 comply with this title and any regulations adopted under this title.

26 16-214.

27 (a) Except as otherwise provided in § 16-202(b) of this subtitle, a person may  
28 not act, attempt to act, or offer to act as a manufacturer, retailer, storage warehouse,  
29 subwholesaler, [vending machine operator,] or wholesaler in the State unless the  
30 person has an appropriate license.

31 (b) (1) A person who violates this section is guilty of a misdemeanor and, on  
32 conviction, is subject to a fine of \$1,000 or imprisonment not exceeding 30 days or  
33 both.

1 (2) Each day that a violation of this section continues is a separate  
2 offense.

3 16-215.

4 (a) Unless authorized by a license, a person may not accept delivery of  
5 unstamped cigarettes.

6 (b) On receipt of a package of cigarettes, a retailer[,] OR subwholesaler[, or  
7 vending machine operator] immediately shall:

8 (1) examine the package to find out whether tobacco tax stamps are  
9 affixed properly to the package as required by § 12-304 of the Tax - General Article;  
10 and

11 (2) reject any unstamped or improperly stamped cigarettes by:

12 (i) returning them to the seller or consignor; or

13 (ii) delivering them to a common carrier for return to the seller or  
14 consignor.

15 (c) (1) There is a presumption that any unstamped cigarettes in the  
16 possession of a retailer, subwholesaler, [vending machine operator,] or wholesaler are  
17 held in violation of this subtitle.

18 (2) A retailer, subwholesaler, [vending machine operator,] or wholesaler  
19 who holds unstamped cigarettes has the burden to prove that the cigarettes are not  
20 held in violation of this subtitle.

21 16-218.

22 (a) Each subwholesaler and each wholesaler:

23 (1) shall get an invoice for each purchase of cigarettes;

24 (2) shall keep a record of all cigarettes received, to which the  
25 subwholesaler and wholesaler shall post each day:

26 (i) the invoice number;

27 (ii) the date of receipt;

28 (iii) the quantity received;

29 (iv) the brand; and

30 (v) the name of the person from whom the cigarettes are received;

31 (3) for cigarette sales to retailers:

1 (i) shall keep a record of the name and address of each retailer to  
2 whom a sale is made; and

3 (ii) except for a transfer of cigarettes to retail stock by a written  
4 memorandum, shall prepare for each sale an invoice that shows the political  
5 subdivision where the retailer is located; and

6 (4) shall keep a complete and accurate record of each sale of cigarettes to  
7 an out-of-state person for resale to out-of-state consumers.

8 (b) (1) Except as provided in paragraph (2) of this subsection, each  
9 subwholesaler and each wholesaler shall make an inventory record each month of all  
10 cigarettes on the premises or under the control of the subwholesaler or wholesaler:

11 (i) at the beginning or end of the month; or

12 (ii) on another specific day of the month, if the subwholesaler or  
13 wholesaler finds it more practical to take inventory on that day and notifies the  
14 Comptroller that inventory will be taken on that day.

15 (2) Cigarettes [in a vending machine or cigarettes] transferred to retail  
16 stock by written memorandum need not be included in the inventory record.

17 (c) Each subwholesaler and each wholesaler shall:

18 (1) keep the records required by this section for 6 years or for a shorter  
19 time set by the Comptroller; and

20 (2) allow the Comptroller to examine the records.

21 [16-220.

22 (a) The Comptroller shall seal a vending machine to prevent the sale or  
23 removal of cigarettes from the machine if:

24 (1) a tax stamp is not visible on each visible package of cigarettes in the  
25 machine, as required by § 16-209(b)(1) of this subtitle; or

26 (2) the machine is not labeled as required by § 16-209(b)(2) of this  
27 subtitle.

28 (b) If the violation for which a vending machine is sealed has been corrected in  
29 the presence of the Comptroller or the Comptroller's designee, the Comptroller shall  
30 remove the seal.]

31 [16-221.

32 (a) Except as otherwise provided in § 16-220 of this subtitle, a person may not  
33 remove or tamper with a seal placed on a vending machine by the Comptroller.

1 (b) A person who willfully violates this section is guilty of a misdemeanor and,  
2 on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding  
3 1 year or both.]

4 16-301.

5 Whenever a person sells cigarettes at retail in a county, the person must have a  
6 county license for[:

7 (1)] each place of business[; and

8 (2) each vending machine, if the applicant sells cigarettes through a  
9 vending machine].

10 16-305.

11 A county licensee shall display the county license in a conspicuous place[:

12 (1)] in the place of business for which it is issued[; or

13 (2) on the premises where the machine is located, if the licensee sells  
14 cigarettes through a vending machine].

15 **Article - Commercial Law**

16 11-501.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) "Basic cost of cigarettes" means the lesser of the invoice cost or the  
19 replacement cost of cigarettes to the retailer or wholesaler; plus any in-freight charge  
20 to the wholesaler otherwise not included in the invoice cost or the replacement cost;  
21 plus, for the wholesaler, the full face value of any applicable Maryland cigarette tax  
22 payable by the wholesaler; minus any trade discount or discount for cash.

23 (c) (1) "Cigarettes" means any size or shaped roll for smoking that is made  
24 of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any  
25 other material except tobacco.

26 (2) "Cigarettes" does not include cigars.

27 (d) (1) "Cost to the retailer", subject to the special cost provisions of § 11-503  
28 of this subtitle, means the basic cost of cigarettes to a retailer, which includes the cost  
29 to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing  
30 business, in the absence of satisfactory proof of a lesser cost, is presumed to be 8  
31 percent of the basic cost of cigarettes to him.

32 (2) As to each carton of 200 cigarettes, a fractional part of a cent equal to  
33 one-tenth of a cent or more in the cost to the retailer shall be rounded off to the next  
34 higher cent.

1 (e) (1) "Cost to the wholesaler", subject to the special cost provisions of §  
2 11-503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a  
3 markup to cover his cost of doing business, which cost of doing business:

4 (i) Includes the cartage cost to a retailer; and

5 (ii) In the absence of satisfactory proof of a lesser cost, is presumed  
6 to be 5 percent of the basic cost of cigarettes to him.

7 (2) As to each carton of 200 cigarettes, a fractional part of a cent equal to  
8 one-tenth of a cent or more in the cost to the wholesaler shall be rounded off to the  
9 next higher cent.

10 (f) "Person" includes an individual, corporation, business trust, estate, trust,  
11 partnership, association, two or more persons having a joint or common interest, or  
12 any other legal or commercial entity.

13 (g) "Replacement cost" means the cost per unit for which the cigarettes could  
14 have been bought by the wholesaler or retailer at any time within 30 days before the  
15 date of sale by him if bought in the same quantity as his last purchase of the  
16 cigarettes.

17 (h) (1) "Retailer" includes any person engaged in the business of making  
18 retail sales of cigarettes within the State at a store, stand, booth, [or] concession,  
19 [through vending machines,] or otherwise.

20 (2) If the person is engaged in the business of making both retail sales of  
21 cigarettes and wholesale sales of cigarettes, the word only applies to the retail sales of  
22 cigarettes portion of the business.

23 (i) "Retail sale of cigarettes" includes any sale whereby cigarettes are sold for  
24 a valuable consideration, including an exchange or barter [and a sale through a  
25 vending machine], made in the ordinary course of trade or the usual conduct of the  
26 seller's business to a purchaser for consumption or use other than resale.

27 (j) "Sell" includes advertise, offer to sell, or offer for sale.

28 [(k) "Vending machine operator" means a person who:

29 (1) Makes retail sales of cigarettes or has cigarettes in his possession  
30 with the intent to sell them exclusively at retail through the medium of a vending  
31 machine or any other mechanical device used for dispensing cigarettes;

32 (2) Owns, operates, and services vending machines or other mechanical  
33 devices used to dispense cigarettes on 40 or more premises; and

34 (3) Services the machines or devices by maintaining an established place  
35 of business for the purchase of cigarettes, including warehousing facilities for the  
36 storage and distribution of cigarettes.]

1        (1)        (K)        (1)        "Wholesale sale of cigarettes" includes any sale whereby  
2 cigarettes are sold for a valuable consideration, made in the ordinary course of trade  
3 or in the usual conduct of the seller's business to a retailer, other than to a [vending  
4 machine operator or to a sub-wholesaler] SUBWHOLESALE described in subsection  
5 [(m)(2)] (L)(2) of this section, for the bona fide purpose of resale.

6                (2)        "Wholesale sale of cigarettes" includes any transfer of cigarettes on  
7 consignment or otherwise, whereby title is retained by the seller as security for the  
8 payment of the purchase price.

9        (1)        (L)        (1)        "Wholesaler" means a person who purchases cigarettes directly  
10 from a manufacturer.

11               (2)        "Wholesaler" includes a person, who, as a [sub-wholesaler]  
12 SUBWHOLESALE:

13               (i)        Purchases cigarettes from another wholesaler solely for the  
14 purpose of bona fide resale to retailers other than those directly or indirectly owned,  
15 affiliated, or controlled by him; and

16               (ii)       Services the retailers by maintaining an established place of  
17 business for the sale of cigarettes, including warehouse facilities, adequate inventory,  
18 proper accounting records, and necessary equipment and vehicles for the storage and  
19 distribution of cigarettes.

20               (3)        If the person is engaged in the business of making both wholesale  
21 sales of cigarettes and retail sales of cigarettes, the word only applies to the wholesale  
22 sales of cigarettes portion of the business.

23 11-503.

24        (a)        In a wholesale sale of cigarettes, the presumptive wholesale markup of 5  
25 percent provided for in § 11-501(e) may be reduced by 2 cents for each carton of 200  
26 cigarettes, if:

27               (1)        The cigarettes are not delivered unless their full price is received by  
28 the wholesaler at or before delivery; and

29               (2)        The purchaser performs or pays for the cartage cost of the cigarettes  
30 to the place of business of the purchaser.

31        (b)        (1)        In the absence of satisfactory proof of a lesser aggregate cost of doing  
32 business, a [vending machine operator or] retailer who purchases cigarettes at prices  
33 ordinarily invoiced to a wholesaler and who receives the wholesaler's discounts on  
34 them shall:

35               (i)        First, add to his basic cost of cigarettes the wholesale markup of  
36 5 percent provided for in § 11-501(e) to cover the cost of doing business as a  
37 wholesaler; and

1 (ii) Then, on the resultant sum, add the retail markup of 8 percent  
2 provided for in § 11-501(d).

3 (2) If the discount received by the [vending machine operator or]  
4 retailer is less than that ordinarily allowed to wholesalers, the wholesale markup of 5  
5 percent may be reduced by the difference between the discount ordinarily allowed to  
6 wholesalers and the discount received by the retailer [or vending machine operator].

7 (c) (1) A wholesaler who sells cigarettes to another wholesaler [or to a  
8 vending machine operator] is not required to include in his selling price the cost to  
9 the wholesaler. However, in the absence of satisfactory proof of a lesser cost for the  
10 service rendered, the wholesaler shall include in the selling price his basic cost of  
11 cigarettes, plus a charge of 1 percent of his basic cost of cigarettes.

12 (2) If a wholesaler purchases cigarettes from another wholesaler, then,  
13 on resale of the cigarettes to a retailer, he is the wholesaler for the purposes of this  
14 subtitle.

### 15 **Article - State Finance and Procurement**

16 7-317.

17 (f) (1) Expenditures from the Cigarette Restitution Fund shall be made for  
18 the following purposes:

19 (i) reduction of the use of tobacco products by minors;

20 (ii) implementation of the Southern Maryland Regional  
21 Strategy-Action Plan for Agriculture adopted by the Tri-County Council for Southern  
22 Maryland with an emphasis on alternative crop uses for agricultural land now used  
23 for growing tobacco;

24 (iii) public and school education campaigns to decrease tobacco use  
25 with initial emphasis on areas targeted by tobacco manufacturers in marketing and  
26 promoting cigarette and tobacco products;

27 (iv) smoking cessation programs;

28 (v) enforcement of the laws regarding tobacco sales;

29 (vi) the purposes of the Maryland Health Care Foundation under  
30 Title 20, Subtitle 5 of the Health - General Article;

31 (vii) primary health care in rural areas of the State and areas  
32 targeted by tobacco manufacturers in marketing and promoting cigarette and tobacco  
33 products;

34 (viii) prevention, treatment, and research concerning cancer, heart  
35 disease, lung disease, tobacco product use, and tobacco control, including operating  
36 costs and related capital projects;

1 (ix) substance abuse treatment and prevention programs; [and]

2 (X) THE PURCHASE OF VENDING MACHINES THAT DISPENSE  
3 TOBACCO PRODUCTS AS PROVIDED UNDER THE EXTINCTION OF CIGARETTE  
4 VENDING MACHINES ACT, CHAPTER \_\_\_\_\_ OF THE ACTS OF 2000; AND

5 [(x)] (XI) any other public purpose.

6 (2) The provisions of this subsection may not be construed to affect the  
7 Governor's powers with respect to a request for an appropriation in the annual budget  
8 bill.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 July 1, 2000.